

# Opinions, Advice, and Legislation Quarterly News

Office of the  
Maryland Attorney General



July - September 2004

## OPINIONS

### ELECTIONS – VOTER REGISTRATION – MAY PART-TIME RESIDENT OF COUNTY REGISTER TO VOTE THERE?

**Question:** May individuals who own property in Ocean City, but live there only part of the year, register to vote in Worcester County?

**Answer:** An individual who owns and sometimes occupies residential property in Ocean City may register to vote in Worcester County only if that individual has elected to make Ocean City his or her primary residence or “domicile.” Such a decision would change the individual’s legal residence for other purposes as well. If the individual intends to retain a residence in another jurisdiction as his or her primary residence, the individual should not register to vote in Worcester County.

*89 Opinions of the Attorney General 166*  
September 13, 2004

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### POLICE OFFICERS – AUTHORITY OF MUNICIPAL OFFICERS TO OPERATE SOBRIETY CHECKPOINT UNDER MUTUAL AID AGREEMENT

Five municipal corporations in Prince George’s County want to enter into a mutual aid agreement, under which their respective police departments will jointly conduct sobriety checkpoints within those municipalities. The sobriety checkpoints would be designed to enforce provisions of the Maryland Vehicle Law that prohibit driving while under the influence of alcohol or while impaired by alcohol or drugs.

**Question:** What is the legality of the mutual aid agreement, in light of a statutory provision that limits a police officer’s authority to enforce the Maryland Vehicle Law outside the officer’s own jurisdiction?

**Answer:** A mutual aid agreement may authorize police officers from several municipalities to jointly conduct a sobriety checkpoint within a participating municipality.

*89 Opinions of the Attorney General 158*  
August 16, 2004

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### PROPERTY TAX – ASSESSMENTS – AUTHORITY OF PROPERTY TAX ASSESSMENT APPEAL BOARD TO OBTAIN REVIEW OF ASSESSMENTS

**Question:** Is a Property Tax Assessment Appeal Board (“PTAAB”) authorized to obtain a review of real property assessments within the geographical area served by the PTAAB?

**Answer:** A PTAAB may request the Director of the State Department of Assessments and Taxation to review the assessment of a property within the jurisdiction of the PTAAB when the assessment relates to an appeal before the PTAAB. A PTAAB is not authorized to obtain review of an assessment unrelated to an appeal.

*89 Opinions of the Attorney General 153*  
August 16, 2004

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## ADVICE LETTERS

### ALCOHOLIC BEVERAGES – AUTHORITY OF CHAIRMAN OF BALTIMORE CITY BOARD OF LICENSE COMMISSIONERS

Article 2B, §15-112(d)(7) of the Maryland Code gives the Chairman of the Baltimore City Board of License Commissioners unique and broad powers as administrative officer of the Board. The same 1949 statute that enacted §15-112(d)(7) also provided for the appointment of an Executive Secretary for the Board, and the position of Executive Secretary has over the years come to assume responsibility for the day-to-day operation of the Board office. Other provisions of Article 2B confer various powers on the Board itself and all of its members.

**Question 1:** May the Chairman personally supervise the Inspection Division of the Board?

**Answer:** Notwithstanding §15-112(d)(7)(ii), other provisions of Article 2B give supervisory powers to the Board as a whole and the Executive Secretary. Cooperation is clearly called for.

**Question 2:** May the Chairman initiate and participate in investigations?

**Answer:** All members of the Board share authority for enforcement decisions.

**Question 3:** Is the Chairman authorized to take enforcement action without the agreement of the other Commissioners?

**Answer:** Article 2B as a whole contemplates agreement by a majority of Board members; the wisest course would be for all parties to cooperate.

**Question 4:** Does the Board's Chief Inspector report directly to the Chairman?

**Answer:** No; the Chief Inspector is responsible to all Board members and the Executive Secretary.

**Question 5:** Does the Chairman have greater authority than the other two Commissioners?

**Answer:** Yes; but the authority granted by §15-112(d)(7) must be construed together with other relevant provisions of Article 2B.

**Question 6:** What is the difference between the duties of the Chairman and those of the Executive Secretary?

**Answer:** The most reasonable accommodation of various provisions of the law would be for the Chairman to defer to the Executive Secretary the day-to-day business of administering the Board office.

**Question 7:** May the Chairman both authorize investigations and judge cases brought as a result of those investigations?

**Answer:** Yes; this is not uncommon for an administrative agency, although the Attorney General's Office has recommended the establishment of "Chinese walls" between investigators and adjudicators to avoid even the appearance of a conflict in roles.

*Letter to  
Senator Nathaniel J. McFadden  
September 15, 2004*

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### CHARTER COUNTIES – COMPENSATION OF COUNTY COUNCIL MEMBERS

The Talbot County Charter currently specifies the annual salary for members of the County Council. However, §5(AA) of Article 25A of the Maryland Code (express powers of charter counties) grants express authority to any charter county to establish a compensation commission, and provides procedures by which such a commission may set compensation and allowances for council members.

**Question:** May Talbot County exercise the authority granted by Article 25A, §5(AA) without amending its charter?

**Answer:** A court might hold that Article XI-A, §6 of the State Constitution precludes this mechanism. However, if the County Charter were amended to make clear that it sets minimum compensation levels and to cross-reference the

compensation commission process, this potential problem would be avoided.

*Letter to*  
*Michael L. Pullen*  
*County Attorney for Talbot County*  
*July 21, 2004*

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**CONSUMER PROTECTION – IDENTITY FRAUD –  
PREEMPTION BY FAIR AND ACCURATE  
CREDIT TRANSACTIONS ACT**

House Bill 255 (2004), which received an unfavorable report in committee and did not pass, included three main provisions: 1) to allow a person to file for expungement of certain police, court, or other records resulting from fraudulent use of the person's identity; 2) to authorize the Office of the Attorney General to issue an "identity fraud passport" to a person who filed a police report concerning identity theft and submitted a certified copy of an expungement order, to be accepted as evidence of identity by law enforcement officers or others who might challenge the person's identity; and 3) to allow consumers to request a consumer reporting agency to block reporting of information that the person identified as erroneous and the result of identity theft.

**Question:** Were the provisions of the bill preempted by the federal Fair and Accurate Credit Transactions Act of 2003?

**Answer:** The Fair and Accurate Credit Transactions Act adopted changes in the Fair Credit Reporting Act to address the crime of identity theft. It amended preemption provisions in the earlier act to disclaim preemption of state laws for the prevention or mitigation of identity theft, except to the extent of inconsistency with the amended act, at the same time forbidding state regulation of certain subject matter. As to the main provisions of HB 255, the first would not have been preempted, and the third clearly would have been. As to the passport provision, the State could require its own

officers to accept such a passport, but it is not clear that it could require others to do so.

*Letter to*  
*Delegate Neil Quinter*  
*July 13, 2004*

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**DRUG ABUSE – STATE REGULATIONS  
REGARDING PRIOR ABUSE BY STATE  
EMPLOYEES OR APPLICANTS**

**Question 1:** Would State regulations regarding prior substance abuse by State employees or applicants for State employment (e.g., COMAR 12.10.01.01, 12.10.01.19, 12.04.01.19) prevent the hiring or promotion of individuals having records of drug use as substance abuse counselors?

**Answer:** An agency head could exclude substance abuse counselors from the application of these regulations by designating their positions not to be "mandated positions," or the regulations could be amended to exempt an "addiction counselor" from the pertinent requirements.

**Question 2:** Do these regulations violate federal anti-discrimination laws, such as the Americans with Disabilities Act?

**Answer:** No; to the extent that the regulations affect State employees or applicants who previously engaged in casual or non-addictive drug use, federal law affords the affected individuals no protection.

*Letter to*  
*Senator Joan Carter Conway*  
*September 13, 2004*

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**EDUCATION – ALTERNATIVE FINANCING FOR  
LOCAL BOARD ADMINISTRATION BUILDING**

**Question 1:** May the Board of Education of Harford County use alternative financing methods, such as are available under Education Article, §4-126 (enacted by Chapters 306 and 307, Laws of 2004), to construct an administration building?

**Answer:** Yes.

**Question 2:** Must the use of these alternative financing methods await the adoption of the Board of Public Works regulations contemplated by ED §4-126?

**Answer:** Although the General Assembly apparently required the adoption of regulations as a prerequisite to the implementation of ED §4-126, the transactions involved in Harford County's project were undertaken under other law and were largely completed as of the effective date of ED §4-126. Accordingly, the adoption of regulations is not a prerequisite to the completion of this particular project.

*Letter to  
Ms. Jacqueline C. Haas  
Superintendent of Schools, Harford County  
September 21, 2004*

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#### **FEDERAL MAGISTRATE JUDGES -- AUTHORITY TO PERFORM WEDDINGS**

**Question:** May a federal Magistrate Judge perform a wedding in Maryland?

**Answer:** Yes; Family Law Article, §2-406(a)(2)(iv) authorizes a judge to perform a marriage ceremony in Maryland, and §2-406(a)(1)(iii) defines "judge" to include a judge of a United States District Court, making no distinction between District Judges and Magistrate Judges.

*Letter to  
Magistrate Judge Beth Gesner  
September 22, 2004*

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#### **GOVERNOR'S REMOVAL AUTHORITY -- BALTIMORE CITY COMMUNITY COLLEGE**

**Question:** Is the Governor authorized to remove a member of the Board of Trustees of Baltimore City Community College (BCCC)?

**Answer:** Yes; while the BCCC statute is silent with regard to removal of Board members, the Maryland Constitution vests in the Governor the power to remove, for incompetence or misconduct, civil officers who are appointed by the Executive for a term of years.

*Letter to  
Senator Nathaniel J. McFadden  
July 30, 2004*

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#### **GOVERNOR'S REMOVAL AUTHORITY -- JUDGES**

Article IV, §4 of the Maryland Constitution provides three bases on which the Governor may remove a judge from office: 1) on conviction of incompetency, willful neglect of duty, misbehavior in office, or any other crime; 2) on impeachment under Article III, §26; and 3) on address by the General Assembly.

**Question:** What are the parameters and history of this and other removal provisions?

**Answer:** The advice letter discusses the various bases under Article IV, §4 for removal and notes that there are no reported cases of removal under any of them. The only reported cases of judicial removal involve removal on recommendation of the Commission on Judicial Disabilities under Article IV, §4B of the Constitution.

*Letter to  
Delegate Donald H. Dwyer, Jr.  
July 19, 2004*

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#### **MOTOR VEHICLE LAWS -- REGULATION OF "POCKET ROCKET" TYPE VEHICLES**

**Question:** Are vehicles referred to as "pocket rockets" or "mini-Harleys" and their riders subject to registration and licensing and safety requirements of State motor vehicle laws?

**Answer:** These vehicles must be registered in order to be operated on public roadways in the State. The owner of such a vehicle must have the required insurance, and the operator must have a valid license or permit. State motor vehicle laws do not, however, require the operator of such a vehicle to wear protective headgear and eye protection.

*Letter to*  
*Delegate Christopher B. Shank*  
*August 9, 2004*

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#### **PLANNING AND ZONING – COMPREHENSIVE PLAN CHANGES**

**Question:** Are the comprehensive plan changes referred to in Article 66B, §3.08(c)(2)(ii) of the Maryland Code subject to the 60-day submission requirements of §3.08(c)(1) and (2)(i)?

**Answer:** No; a review of legislative history indicates that §3.08(c)(2)(ii) has nothing to do with the language that precedes it. The preceding language applies to certain construction projects, and not to comprehensive plan changes.

*Letter to*  
*Delegate Michael D. Smigiel, Sr.*  
*September 23, 2004*

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#### **PRESCRIPTION DRUGS – STATE REGULATION OF COSTS**

**Question:** Would legislation establishing a regulatory body, similar to the Public Service Commission, to regulate prescription drug costs present constitutional problems?

**Answer:** Legislation – for example, legislation similar to the Maine Rx Program – that attempted to control the prices of prescription drugs sold to consumers in Maryland, without any tie to or impact on prices in other states, if it treated all drug manufacturers alike, would be considered facially neutral and thus would not violate the dormant

Commerce Clause of the United States Constitution. Also, unless the legislation directly conflicted with federal Medicaid law, it would not be preempted by federal law. Moreover, such legislation, designed to make prescription drugs more affordable for consumers, would likely be viewed as a legitimate and rational means of protecting consumer welfare, and would therefore meet Due Process Clause standards.

*Letter to*  
*Delegate Charles R. Boutin*  
*September 21, 2004*

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#### **PHARMACY BENEFIT MANAGERS – INFORMATION DISCLOSURE**

**Question 1:** May a Pharmacy Benefit Manager (PBM) legally refuse to disclose rebates that it receives under contracts with drug manufacturers?

**Answer:** Yes; there is ordinarily no requirement that a contract between private parties be disclosed to persons who are not parties to the contract.

**Question 2:** Are employers, governments, insurance plans, and consumers within their legal rights to demand disclosure of such information?

**Answer:** Nothing in the law would prevent these entities from requesting information in the course of negotiations or from negotiating contracts to require disclosure.

*Letter to*  
*Delegate Marilyn Goldwater*  
*August 10, 2004*

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#### **PUBLIC OFFICERS AND EMPLOYEES – TWO OFFICES OF PROFIT – DEPUTY DIRECTOR OF MARYLAND ENVIRONMENTAL SERVICE AND COMMUNITY COLLEGE TRUSTEE**

**Question:** Is the Deputy Director of the Maryland Environmental Service disqualified from

accepting an appointment to the Chesapeake College Board of Trustees?

**Answer:** No. Article 35 of the Maryland Declaration of Rights bars an individual from simultaneously holding more than one “office of profit.” Although the Deputy Director holds an office of profit and the position of community college trustee has some earmarks of such an office, members of the Chesapeake College board serve without compensation. Therefore, the trustee position would not be a second office of profit.

*Letter to  
Mr. Conway Gregory  
July 19, 2004*

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#### **STATE HOUSE AND OTHER BUILDINGS WITHIN STATE CIRCLE – ALLOCATION OF SPACE**

**Question:** What authority does the State House Trust have to approve or disapprove the use of space in the State House and within State Circle?

**Answer:** Any changes in the allocation of space in the State House or the Old Treasury Building, particularly any changes stemming from the repair or improvement of the facility, are subject to the approval of the Trust.

*Letter to  
Senate President Thomas V. Mike Miller, Jr.  
and House Speaker Michael E. Busch  
July 14, 2004*

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